

Interruptive Military Service

Background

The federal Uniformed Services Employment and Re-employment Rights Act (USERRA) provides for the restoration of retirement benefits for those whose public employment has been interrupted by military service. A veteran must be re-employed to trigger USERRA rights. Thus, USERRA does not address the retirement benefits that would have accrued to members who die while in active service or those who are unable to be re-employed due to a total disability.

Committee Activity

Presentations:

September 7, 2004 - Executive Committee
October 19, 2004 - Full Committee
November 9, 2004 - Executive Committee
December 7, 2004 - Full Committee

Proposal:

December 7, 2004 - Full Committee

Recommendation to Legislature

Allow the survivors of a member who dies while performing interruptive military service to pay the contributions that the member would have paid but for the military service, and allow the member's service credit to accrue to the date of death. Similarly, allow a member who becomes totally disabled while performing interruptive military service to pay the contributions the member would have paid but for the military service, and receive service credit up to the date of disability.

Staff Contact

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Select Committee on Pension Policy

Interruptive Military Service Credit

(November 16, 2004)

Issue

The issue before the Select Committee on Pension Policy is whether to expand opportunities for members of the Washington State Retirement Systems to acquire service credit for periods of interruptive military service.

Staff

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Members Impacted

All members of Washington's retirement systems may avail themselves of some form of military service credit. "Interruptive" military service credit is available to those who interrupt public employment to serve in the uniformed military branches of the United States. This type of service is governed by the federal Uniformed Services Employment and Re-employment Rights Act (USERRA)¹. The act is described in more detail under the heading "Current Situation."

Current Situation

Interruptive military service is governed by federal law. At a minimum, public employers must provide the protections specified in the Uniformed Services Employment and Re-employment Rights Act (USERRA). USERRA was signed into law in 1994, with amendments made in 1996, 1998 and 2000. This law provides for the re-employment of individuals who leave employment to serve in the uniformed military branches. Included in USERRA's re-employment rights is the right to restoration of retirement plan benefits.

For employers, the fundamental requirement of USERRA as it relates to retirement plan benefits is to provide for recovery of the benefits that a re-employed participant did not receive due to qualifying military service. The employee must be treated for vesting and benefit accrual purposes as if he or she had remained continuously employed. Employers do not have to begin making up pension contributions until after the veteran returns to civilian employment with the same employer. Employers may fund makeup contributions over a period of three times the military service period, not to exceed five years. A rehired veteran is not entitled to missed allocations for any lost earnings on makeup contributions.

Generally, under USERRA, rehired veterans have up to three times the period of service - not to exceed five years - to make up missed employee contributions. The amount of makeup contributions is subject to the limits that would have applied during the military service period. No interest is charged on the contributions, because rehired veterans can only be charged the amount they would have been permitted or required to contribute had they remained continuously employed throughout the period of military service. The Washington State Retirement Systems allow a five-year payback period for employee contributions, regardless of the period of military service. Under USERRA there are exceptions to this general rule that may allow for a longer payback period.

The following hypothetical example illustrates how a member who is called into active duty may obtain service credit for interruptive military service. Consider a member of the Washington State Patrol Retirement System (WSPRS) who was hired July 1, 1999 and was called into active service from July 1, 2003 through June 30, 2004 after completing four years of service with WSPRS. This member's salary was \$40,000 when he left employment and he was required to make an employee contribution of 2% of salary during the period of active service. There was no required employer contribution. Assuming that the member is re-employed upon his return from active duty (according to the terms and conditions set forth in USERRA), the member has five years (more generous than USERRA's three years) to pay back the contributions he would have paid had he remained continuously employed. Therefore his total payment obligation is:

$$2\% \times \$40,000 \times 1 \text{ year} = \$800$$

Assuming repayment, the member is treated as if he had been continuously employed and his service credit had continued to accrue while away on active duty. The member's vesting date (based on a five-year vesting period for this plan) will be July 1, 2004. *Note:* the member's payback will vary from plan to plan, as member contribution rates differ throughout the Washington State Retirement Systems. Also, several of the Plans 1 (PERS 1, LEOFF 1 and Washington State Patrol "Plan 1") allow interruptive military service credit at no cost to the member if certain statutory conditions are met. See RCW 41.40.170, 41.46.190, 43.43.130(5) and 43.43.260(3)(a).

USERRA pre-empts state retirement policy in that all public employers must meet the minimum requirements of this federal law. However, states have the discretion to go beyond USERRA and grant benefits for the period of interruptive service that are more generous than those available under the act. The goal of USERRA is to treat employees who are called to active duty as if they had been continuously employed. Employers who choose to go beyond USERRA may reward active duty by paying all or part of the contributions that the member would have paid during the period of active duty. They may also provide all or part of the member's salary during the period of active service.

Options to Address Limitations of USERRA

1. Death in Service

While USERRA provides for the restoration of retirement benefits upon re-employment of a member whose public employment was interrupted by military service, it does not address the retirement benefits that would have accrued to members who die while in active service or those who are unable to be re-employed due to a disability. Thus, for example, if a PERS 2 member would have reached ten years of service during the period of interruptive military service and dies in action, but had only nine years of service credit prior to leaving for active duty, the surviving spouse would be limited to a refund (based on nine years of service credit) and would not be able to receive a survivor benefit in the nature of a pension payment (based on ten years of service credit). This could be remedied by allowing the surviving spouse to pay the contributions that the member would have paid but for the military service, and allowing the service credit to accrue to the date of death.

2. Total Disability in Service

Similarly, if the same member whose public employment was interrupted by military service becomes totally incapacitated for continued employment, that member's disability allowance would be based upon service credit up to the date he/she left employment for military service instead of to the date of disability. Allowing the disabled member to pay the member contributions and restore service credit up to the date of disability would be consistent with the federal policy of treating the veteran for vesting and benefit accrual purposes as if he/she had been continuously employed.

3. Employer Payments During Military Leave

Several Washington public employers (e.g. Pierce, Grant and King counties) have decided to voluntarily supplement the salary of members on military leave. Currently, such income cannot be reported to the Department of Retirement Systems (DRS). Also, federal law is currently unclear as to the status of such income under IRS rules, and federal legislation is pending to address this issue. Thus, at the present time, none of these members can continue to accrue service credit while on active duty. They are, however, relieved of paying employee contributions during the period of military leave. As provided in USERRA, such members must wait until re-employment and pay back the member contributions they would have made had they been continuously employed so that service credit can be awarded. For vesting and accrual purposes, such members will still be treated as if they had been continuously employed.

Allowing employers to report these voluntary payments to DRS would enable some members to continue to accrue service credit during periods of interruptive military service for as long as their pension contributions are being paid. In some instances, this approach could result in service credit being awarded for a period of military service that does not result in an honorable discharge. It could also allow for benefit accruals even when the member, for whatever reason, does not return to the retirement system. Thus some members who never would have qualified for interruptive military service credit at all may be awarded service credit under this kind of provision. While such service credit could later be

forfeited, DRS reportedly does not have a mechanism for tracking those who do not return from service and who are dishonorably discharged. In addition, OSA staff has been advised that DRS has no mechanism to forfeit service credit when contributions have already been paid.

The above-described options have been explored by the LEOFF 2 Board as possible legislative options for 2005, although no action has been taken by the Board as of the date of this report.

Executive Committee Recommendation

On September 7, 2005 the Executive Committee recommended that new legislation be presented to the full SCPP that would address the limitations of USERRA. These limitations have to do with the fact that under USERRA a veteran must be re-employed to trigger USERRA rights; and those who die or become totally disabled while in service are not able to reinstate service credit under USERRA because they are not re-employed. The Executive Committee also suggested that the SCPP consider amendments to existing law that would allow members whose public employment is interrupted by serving in the military and whose employers are voluntarily paying salary during military leave to accrue service credit while serving in the uniformed services. This would be accomplished by allowing such pay to be reported to the Department of Retirement Systems (DRS) for pension purposes, and allowing the accrual of corresponding service credit if the member and employer continue to pay the required pension contributions during the period of interruptive service.

A bill draft was prepared for the October 19, 2004 SCPP meeting and the full committee heard an updated report on this issue. The bill draft included three elements: one related to death in service, one related to total disability in service, and one related to voluntary employer payments during service. No action was taken by the full committee at that time. The Executive Committee, however, requested that the Department of Retirement Systems submit a memo to the full committee documenting its administrative and policy concerns with the third element of the bill draft, and that staff work with DRS to revise the draft legislation.

A second bill draft was presented to the Executive Committee on November 9, 2004. This draft included the death and disability elements, but deleted the employer pay element. The Executive Committee recommended that this second version of the bill be forwarded to the full committee.

Bill Draft

The proposed bill draft is attached. The draft addresses service credit for those who are not re-employed due to death or total disability while serving in the uniformed services. As in the prior draft, where interruptive military service credit is already available to members at no cost, the draft continues the no-cost policy for survivors of deceased veterans and members who become totally disabled. LEOFF 1 is not included in the draft because members of that plan already receive free interruptive military service credit and there is no re-employment requirement.

Fiscal Note (Draft)

A draft fiscal note is attached.

Administrative Impacts

The Department of Retirement Systems provided written documentation of its concerns with the original (first) draft of the proposed legislation in its letter to the Chair and Vice Chair dated October 28, 2004. A copy of the letter is attached.

1. For complete information about USERRA, see the USERRA Advisor, <http://www.dol.gov/elaws/userra.htm>.



STATE OF WASHINGTON
DEPARTMENT OF RETIREMENT SYSTEMS

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October 28, 2004

The Honorable Karen Fraser, Chair
The Honorable Steve Conway, Vice-Chair
Select Committee on Pension Policy
Post Office Box 40914
Olympia, Washington 98504-0914

RECEIVED

OCT 28 2004

Office of
The State Actuary

Dear Senator Fraser and Representative Conway:

Subject: Purchase of Interruptive Military Service Credit

At the October 19, 2004 Select Committee on Pension Policy (SCPP) meeting, the Department of Retirement Systems (DRS) was asked to provide input on the proposal to allow the purchase of retirement service credit for service men and women on interruptive military leave. DRS supports the death and disability provisions of the proposal, but has concerns about the third provision which would allow employers to report as earnable compensation any offset salary being paid to the employee.

Current Federal and State law on interruptive military service is consistent in two areas:

- It requires that service be designated as honorable.
- It requires the employee to return to covered service if he or she is able.

The death and disability proposals also require the military service to be deemed as honorable. If however, employers are allowed to report a salary offset to DRS (the third provision), a situation exists where the member may earn partial or total service credit for periods where the nature of the military service could be dishonorable, and where a return to employment is not required or does not occur. This creates an inequity in the treatment of those members not receiving the pay offset who must serve honorably and return to covered employment in order to purchase their missing service.

As I mentioned at the October 19th meeting, the current process for purchasing service for interruptive leave is both easy and efficient. With an average cost of approximately \$1,700 for nine months of service credit, a member can initiate the purchase with a simple phone call and can take up to five years to pay with no interest. Members may pay in installments or with a lump sum at anytime during the five years. This same process would be utilized to implement the death and disability proposals. While reporting an offset salary creates no additional cost by itself, there would be increased administrative cost if DRS is required to begin tracking offset pay and related service credit.

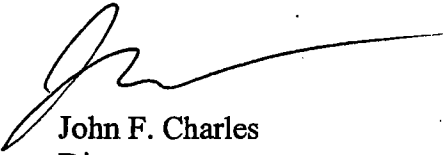


Senator Karen Fraser
Representative Steve Conway
October 28, 2004
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As noted above, the death and disability proposals are in alignment with Federal and State law and the existing policy and process for purchasing interruptive military service. However, allowing service to be earned due to reporting offset pay goes beyond the current policy and creates inequity in the treatment of members. Based on this information I encourage the removal of the reporting of offset salary from the proposal.

Please contact me at 664-7312 if you would like to discuss this issue.

Sincerely,

A handwritten signature in black ink, appearing to be 'John F. Charles', with a long horizontal flourish extending to the right.

John F. Charles
Director

1 AN ACT Relating to interruptive military service credit within the
2 public employees' retirement system, the school employees' retirement
3 system, the teachers' retirement system, the law enforcement officers'
4 and fire fighters' retirement system plan 2, the Washington state
5 patrol retirement system, and the public safety employees' retirement
6 system; amending RCW 41.40.170, 41.40.710, 41.40.805, 41.35.470,
7 41.35.650, 41.32.260, 41.32.810, 41.32.865, 41.26.520, 43.43.260, and
8 41.37.260; and providing an effective date.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

10 **Sec. 1.** RCW 41.40.170 and 2002 c 27 s 2 are each amended to read
11 as follows:

12 (1) A member who has served or shall serve on active federal
13 service in the military or naval forces of the United States and who
14 left or shall leave an employer to enter such service shall be deemed
15 to be on military leave of absence if he or she has resumed or shall
16 resume employment as an employee within one year from termination
17 thereof.

18 (2) If he or she has applied or shall apply for reinstatement of
19 employment, within one year from termination of the military service,

1 and is refused employment for reasons beyond his or her control, he or
2 she shall, upon resumption of service within ten years have such
3 service credited to him or her.

4 (3) In any event, after completing twenty-five years of creditable
5 service, any member may have service in the armed forces credited to
6 him or her as a member whether or not he or she left the employ of an
7 employer to enter the armed service: PROVIDED, That in no instance,
8 described in this section, shall military service in excess of five
9 years be credited: AND PROVIDED FURTHER, That in each instance the
10 member must restore all withdrawn accumulated contributions, which
11 restoration must be completed within five years of membership service
12 following the first resumption of employment or complete twenty-five
13 years of creditable service: AND PROVIDED FURTHER, That this section
14 will not apply to any individual, not a veteran within the meaning of
15 RCW 41.04.005.

16 (4) The surviving spouse or eligible child or children of a member
17 who left the employ of an employer to enter the uniformed services of
18 the United States and died while serving in the uniformed services may,
19 on behalf of the deceased member, apply for retirement system service
20 credit under this subsection up to the date of the member's death in
21 the uniformed services. The department shall establish the deceased
22 member's service credit if the surviving spouse or eligible child or
23 children:

24 (a) Provides to the director proof of the member's death while
25 serving in the uniformed services; and

26 (b) Provides to the director proof of the member's honorable
27 service in the uniformed services prior to the date of death.

28 (5) A member who leaves the employ of an employer to enter the
29 uniformed services of the United States and becomes totally
30 incapacitated for continued employment by an employer while serving in
31 the uniformed services is entitled to retirement system service credit
32 under this subsection up to the date of discharge from the uniformed
33 services if:

34 (a) The member obtains a determination from the director that he or
35 she is totally incapacitated for continued employment due to conditions
36 or events that occurred while serving in the uniformed services; and

37 (b) The member provides to the director proof of honorable
38 discharge from the uniformed services.

1 **Sec. 2.** RCW 41.40.710 and 2000 c 247 s 1106 are each amended to
2 read as follows:

3 (1) A member who is on a paid leave of absence authorized by a
4 member's employer shall continue to receive service credit as provided
5 for under the provisions of RCW 41.40.610 through 41.40.740.

6 (2) A member who receives compensation from an employer while on an
7 authorized leave of absence to serve as an elected official of a labor
8 organization, and whose employer is reimbursed by the labor
9 organization for the compensation paid to the member during the period
10 of absence, may also be considered to be on a paid leave of absence.
11 This subsection shall only apply if the member's leave of absence is
12 authorized by a collective bargaining agreement that provides that the
13 member retains seniority rights with the employer during the period of
14 leave. The compensation earnable reported for a member who establishes
15 service credit under this subsection may not be greater than the salary
16 paid to the highest paid job class covered by the collective bargaining
17 agreement.

18 (3) Except as specified in subsection (4) of this section, a member
19 shall be eligible to receive a maximum of two years service credit
20 during a member's entire working career for those periods when a member
21 is on an unpaid leave of absence authorized by an employer. Such
22 credit may be obtained only if:

23 (a) The member makes both the plan 2 employer and member
24 contributions plus interest as determined by the department for the
25 period of the authorized leave of absence within five years of
26 resumption of service or prior to retirement whichever comes sooner; or

27 (b) If not within five years of resumption of service but prior to
28 retirement, pay the amount required under RCW 41.50.165(2).

29 The contributions required under (a) of this subsection shall be
30 based on the average of the member's compensation earnable at both the
31 time the authorized leave of absence was granted and the time the
32 member resumed employment.

33 (4) A member who leaves the employ of an employer to enter the
34 (~~(armed forces)~~) uniformed services of the United States shall be
35 entitled to retirement system service credit for up to five years of
36 military service. This subsection shall be administered in a manner
37 consistent with the requirements of the federal uniformed services
38 employment and reemployment rights act.

1 (a) The member qualifies for service credit under this subsection
2 if:

3 (i) Within ninety days of the member's honorable discharge from the
4 uniformed services of the United States ((armed forces)), the member
5 applies for reemployment with the employer who employed the member
6 immediately prior to the member entering the ((United States armed
7 ~~forces~~)) uniformed services; and

8 (ii) The member makes the employee contributions required under RCW
9 41.45.061 and 41.45.067 within five years of resumption of service or
10 prior to retirement, whichever comes sooner; or

11 (iii) Prior to retirement and not within ninety days of the
12 member's honorable discharge or five years of resumption of service the
13 member pays the amount required under RCW 41.50.165(2).

14 (b) Upon receipt of member contributions under (a)(ii), (d)(iii),
15 or (e)(iii) of this subsection, the department shall establish the
16 member's service credit and shall bill the employer for its
17 contribution required under RCW 41.45.060, 41.45.061, and 41.45.067 for
18 the period of military service, plus interest as determined by the
19 department.

20 (c) The contributions required under (a)(ii), (d)(iii), or (e)(iii)
21 of this subsection shall be based on the compensation the member would
22 have earned if not on leave, or if that cannot be estimated with
23 reasonable certainty, the compensation reported for the member in the
24 year prior to when the member went on military leave.

25 (d) The surviving spouse or eligible child or children of a member
26 who left the employ of an employer to enter the uniformed services of
27 the United States and died while serving in the uniformed services may,
28 on behalf of the deceased member, apply for retirement system service
29 credit under this subsection up to the date of the member's death in
30 the uniformed services. The department shall establish the deceased
31 member's service credit if the surviving spouse or eligible child or
32 children:

33 (i) Provides to the director proof of the member's death while
34 serving in the uniformed services;

35 (ii) Provides to the director proof of the member's honorable
36 service in the uniformed services prior to the date of death; and

37 (iii) Pays the employee contributions required under chapter 41.45

1 RCW within five years of the date of death or prior to the distribution
2 of any benefit, whichever comes first.

3 (e) A member who leaves the employ of an employer to enter the
4 uniformed services of the United States and becomes totally
5 incapacitated for continued employment by an employer while serving in
6 the uniformed services is entitled to retirement system service credit
7 under this subsection up to the date of discharge from the uniformed
8 services if:

9 (i) The member obtains a determination from the director that he or
10 she is totally incapacitated for continued employment due to conditions
11 or events that occurred while serving in the uniformed services;

12 (ii) The member provides to the director proof of honorable
13 discharge from the uniformed services; and

14 (iii) The member pays the employee contributions required under
15 chapter 41.45 RCW within five years of the director's determination of
16 total disability or prior to the distribution of any benefit, whichever
17 comes first.

18 **Sec. 3.** RCW 41.40.805 and 2000 c 247 s 306 are each amended to
19 read as follows:

20 (1) A member who is on a paid leave of absence authorized by a
21 member's employer shall continue to receive service credit.

22 (2) A member who receives compensation from an employer while on an
23 authorized leave of absence to serve as an elected official of a labor
24 organization, and whose employer is reimbursed by the labor
25 organization for the compensation paid to the member during the period
26 of absence, may also be considered to be on a paid leave of absence.
27 This subsection shall only apply if the member's leave of absence is
28 authorized by a collective bargaining agreement that provides that the
29 member retains seniority rights with the employer during the period of
30 leave. The earnable compensation reported for a member who establishes
31 service credit under this subsection may not be greater than the salary
32 paid to the highest paid job class covered by the collective bargaining
33 agreement.

34 (3) Except as specified in subsection (4) of this section, a member
35 shall be eligible to receive a maximum of two years service credit
36 during a member's entire working career for those periods when a member

1 is on an unpaid leave of absence authorized by an employer. Such
2 credit may be obtained only if:

3 (a) The member makes the contribution on behalf of the employer,
4 plus interest, as determined by the department; and

5 (b) The member makes the employee contribution, plus interest, as
6 determined by the department, to the defined contribution portion.

7 The contributions required shall be based on the average of the
8 member's earnable compensation at both the time the authorized leave of
9 absence was granted and the time the member resumed employment.

10 (4) A member who leaves the employ of an employer to enter the
11 (~~((armed forces))~~) uniformed services of the United States shall be
12 entitled to retirement system service credit for up to five years of
13 military service if within ninety days of the member's honorable
14 discharge from the uniformed services of the United States (~~((armed~~
15 ~~forces))~~), the member applies for reemployment with the employer who
16 employed the member immediately prior to the member entering the
17 (~~((United States armed forces))~~) uniformed services. This subsection
18 shall be administered in a manner consistent with the requirements of
19 the federal uniformed services employment and reemployment rights act.

20 The department shall establish the member's service credit and
21 shall bill the employer for its contribution required under RCW
22 41.45.060 and 41.45.067 for the period of military service, plus
23 interest as determined by the department. Service credit under this
24 subsection may be obtained only if the member makes the employee
25 contribution to the defined contribution portion as determined by the
26 department.

27 The contributions required shall be based on the compensation the
28 member would have earned if not on leave, or if that cannot be
29 estimated with reasonable certainty, the compensation reported for the
30 member in the year prior to when the member went on military leave.

31 (a) The surviving spouse or eligible child or children of a member
32 who left the employ of an employer to enter the uniformed services of
33 the United States and died while serving in the uniformed services may,
34 on behalf of the deceased member, apply for retirement system service
35 credit under this subsection up to the date of the member's death in
36 the uniformed services. The department shall establish the deceased
37 member's service credit if the surviving spouse or eligible child or
38 children:

1 (i) Provides to the director proof of the member's death while
2 serving in the uniformed services;

3 (ii) Provides to the director proof of the member's honorable
4 service in the uniformed services prior to the date of death; and

5 (iii) Pays the employee contributions required under this
6 subsection within five years of the date of death or prior to the
7 distribution of any benefit, whichever comes first.

8 (b) A member who leaves the employ of an employer to enter the
9 uniformed services of the United States and becomes totally
10 incapacitated for continued employment by an employer while serving in
11 the uniformed services is entitled to retirement system service credit
12 under this subsection up to the date of discharge from the uniformed
13 services if:

14 (i) The member obtains a determination from the director that he or
15 she is totally incapacitated for continued employment due to conditions
16 or events that occurred while serving in the uniformed services;

17 (ii) The member provides to the director proof of honorable
18 discharge from the uniformed services; and

19 (iii) The member pays the employee contributions required under
20 this subsection within five years of the director's determination of
21 total disability or prior to the distribution of any benefit, whichever
22 comes first.

23 **Sec. 4.** RCW 41.35.470 and 1998 c 341 s 108 are each amended to
24 read as follows:

25 (1) A member who is on a paid leave of absence authorized by a
26 member's employer shall continue to receive service credit as provided
27 for under the provisions of RCW 41.35.400 through 41.35.599.

28 (2) A member who receives compensation from an employer while on an
29 authorized leave of absence to serve as an elected official of a labor
30 organization, and whose employer is reimbursed by the labor
31 organization for the compensation paid to the member during the period
32 of absence, may also be considered to be on a paid leave of absence.
33 This subsection shall only apply if the member's leave of absence is
34 authorized by a collective bargaining agreement that provides that the
35 member retains seniority rights with the employer during the period of
36 leave. The compensation earnable reported for a member who establishes

1 service credit under this subsection may not be greater than the salary
2 paid to the highest paid job class covered by the collective bargaining
3 agreement.

4 (3) Except as specified in subsection (4) of this section, a member
5 shall be eligible to receive a maximum of two years service credit
6 during a member's entire working career for those periods when a member
7 is on an unpaid leave of absence authorized by an employer. Such
8 credit may be obtained only if:

9 (a) The member makes both the plan 2 employer and member
10 contributions plus interest as determined by the department for the
11 period of the authorized leave of absence within five years of
12 resumption of service or prior to retirement whichever comes sooner; or

13 (b) If not within five years of resumption of service but prior to
14 retirement, pay the amount required under RCW 41.50.165(2).

15 The contributions required under (a) of this subsection shall be
16 based on the average of the member's compensation earnable at both the
17 time the authorized leave of absence was granted and the time the
18 member resumed employment.

19 (4) A member who leaves the employ of an employer to enter the
20 (~~(armed forces)~~) uniformed services of the United States shall be
21 entitled to retirement system service credit for up to five years of
22 military service. This subsection shall be administered in a manner
23 consistent with the requirements of the federal uniformed services
24 employment and reemployment rights act.

25 (a) The member qualifies for service credit under this subsection
26 if:

27 (i) Within ninety days of the member's honorable discharge from the
28 uniformed services of the United States (~~(armed forces)~~), the member
29 applies for reemployment with the employer who employed the member
30 immediately prior to the member entering the (~~(United States armed~~
31 ~~forces)~~) uniformed services; and

32 (ii) The member makes the employee contributions required under RCW
33 41.35.430 within five years of resumption of service or prior to
34 retirement, whichever comes sooner; or

35 (iii) Prior to retirement and not within ninety days of the
36 member's honorable discharge or five years of resumption of service the
37 member pays the amount required under RCW 41.50.165(2).

1 (b) Upon receipt of member contributions under (a)(ii), (d)(iii),
2 or (e)(iii) of this subsection, the department shall establish the
3 member's service credit and shall bill the employer for its
4 contribution required under RCW 41.35.430 for the period of military
5 service, plus interest as determined by the department.

6 (c) The contributions required under (a)(ii), (d)(iii), or (e)(iii)
7 of this subsection shall be based on the compensation the member would
8 have earned if not on leave, or if that cannot be estimated with
9 reasonable certainty, the compensation reported for the member in the
10 year prior to when the member went on military leave.

11 (d) The surviving spouse or eligible child or children of a member
12 who left the employ of an employer to enter the uniformed services of
13 the United States and died while serving in the uniformed services may,
14 on behalf of the deceased member, apply for retirement system service
15 credit under this subsection up to the date of the member's death in
16 the uniformed services. The department shall establish the deceased
17 member's service credit if the surviving spouse or eligible child or
18 children:

19 (i) Provides to the director proof of the member's death while
20 serving in the uniformed services;

21 (ii) Provides to the director proof of the member's honorable
22 service in the uniformed services prior to the date of death; and

23 (iii) Pays the employee contributions required under chapter 41.45
24 RCW within five years of the date of death or prior to the distribution
25 of any benefit, whichever comes first.

26 (e) A member who leaves the employ of an employer to enter the
27 uniformed services of the United States and becomes totally
28 incapacitated for continued employment by an employer while serving in
29 the uniformed services is entitled to retirement system service credit
30 under this subsection up to the date of discharge from the uniformed
31 services if:

32 (i) The member obtains a determination from the director that he or
33 she is totally incapacitated for continued employment due to conditions
34 or events that occurred while serving in the uniformed services;

35 (ii) The member provides to the director proof of honorable
36 discharge from the uniformed services; and

37 (iii) The member pays the employee contributions required under

1 chapter 41.45 RCW within five years of the director's determination of
2 total disability or prior to the distribution of any benefit, whichever
3 comes first.

4 **Sec. 5.** RCW 41.35.650 and 1998 c 341 s 206 are each amended to
5 read as follows:

6 (1) A member who is on a paid leave of absence authorized by a
7 member's employer shall continue to receive service credit.

8 (2) A member who receives compensation from an employer while on an
9 authorized leave of absence to serve as an elected official of a labor
10 organization, and whose employer is reimbursed by the labor
11 organization for the compensation paid to the member during the period
12 of absence, may also be considered to be on a paid leave of absence.
13 This subsection shall only apply if the member's leave of absence is
14 authorized by a collective bargaining agreement that provides that the
15 member retains seniority rights with the employer during the period of
16 leave. The earnable compensation reported for a member who establishes
17 service credit under this subsection may not be greater than the salary
18 paid to the highest paid job class covered by the collective bargaining
19 agreement.

20 (3) Except as specified in subsection (4) of this section, a member
21 shall be eligible to receive a maximum of two years service credit
22 during a member's entire working career for those periods when a member
23 is on an unpaid leave of absence authorized by an employer. Such
24 credit may be obtained only if:

25 (a) The member makes the contribution on behalf of the employer,
26 plus interest, as determined by the department; and

27 (b) The member makes the employee contribution, plus interest, as
28 determined by the department, to the defined contribution portion.

29 The contributions required shall be based on the average of the
30 member's earnable compensation at both the time the authorized leave of
31 absence was granted and the time the member resumed employment.

32 (4) A member who leaves the employ of an employer to enter the
33 (~~((armed forces))~~) uniformed services of the United States shall be
34 entitled to retirement system service credit for up to five years of
35 military service if within ninety days of the member's honorable
36 discharge from the uniformed services of the United States (~~((armed~~
37 ~~forces))~~), the member applies for reemployment with the employer who

1 employed the member immediately prior to the member entering the
2 (~~United States armed forces~~) uniformed services. This subsection
3 shall be administered in a manner consistent with the requirements of
4 the federal uniformed services employment and reemployment rights act.

5 The department shall establish the member's service credit and
6 shall bill the employer for its contribution required under RCW
7 41.35.720 for the period of military service, plus interest as
8 determined by the department. Service credit under this subsection may
9 be obtained only if the member makes the employee contribution to the
10 defined contribution portion as determined by the department.

11 The contributions required shall be based on the compensation the
12 member would have earned if not on leave, or if that cannot be
13 estimated with reasonable certainty, the compensation reported for the
14 member in the year prior to when the member went on military leave.

15 (a) The surviving spouse or eligible child or children of a member
16 who left the employ of an employer to enter the uniformed services of
17 the United States and died while serving in the uniformed services may,
18 on behalf of the deceased member, apply for retirement system service
19 credit under this subsection up to the date of the member's death in
20 the uniformed services. The department shall establish the deceased
21 member's service credit if the surviving spouse or eligible child or
22 children:

23 (i) Provides to the director proof of the member's death while
24 serving in the uniformed services;

25 (ii) Provides to the director proof of the member's honorable
26 service in the uniformed services prior to the date of death; and

27 (iii) Pays the employee contributions required under this
28 subsection within five years of the date of death or prior to the
29 distribution of any benefit, whichever comes first.

30 (b) A member who leaves the employ of an employer to enter the
31 uniformed services of the United States and becomes totally
32 incapacitated for continued employment by an employer while serving in
33 the uniformed services is entitled to retirement system service credit
34 under this subsection up to the date of discharge from the uniformed
35 services if:

36 (i) The member obtains a determination from the director that he or
37 she is totally incapacitated for continued employment due to conditions
38 or events that occurred while serving in the uniformed services;

1 (ii) The member provides to the director proof of honorable
2 discharge from the uniformed services; and

3 (iii) The member pays the employee contributions required under
4 this subsection within five years of the director's determination of
5 total disability or prior to the distribution of any benefit, whichever
6 comes first.

7 **Sec. 6.** RCW 41.32.260 and 1992 c 212 s 8 are each amended to read
8 as follows:

9 Any member whose public school service is interrupted by active
10 service to the United States as a member of its (~~military, naval or~~
11 ~~air service~~) uniformed services, or to the state of Washington, as a
12 member of the legislature, may upon becoming reemployed in the public
13 schools, receive credit for that service upon presenting satisfactory
14 proof, and contributing to the member reserve, either in a lump sum or
15 installments, amounts determined by the director. Except that no
16 military service credit in excess of five years shall be established or
17 reestablished after July 1, 1961, unless the service was actually
18 rendered during time of war. This section shall be administered in a
19 manner consistent with the requirements of the federal uniformed
20 services employment and reemployment rights act.

21 (1) The surviving spouse or eligible child or children of a member
22 who left the employ of an employer to enter the uniformed services of
23 the United States and died while serving in the uniformed services may,
24 on behalf of the deceased member, apply for retirement system service
25 credit under this subsection up to the date of the member's death in
26 the uniformed services. The department shall establish the deceased
27 member's service credit if the surviving spouse or eligible child or
28 children:

29 (a) Provides to the director proof of the member's death while
30 serving in the uniformed services;

31 (b) Provides to the director proof of the member's honorable
32 service in the uniformed services prior to the date of death; and

33 (c) Pays the employee contributions required under chapter 41.45
34 RCW within five years of the date of death or prior to the distribution
35 of any benefit, whichever comes first.

36 (2) A member who leaves the employ of an employer to enter the
37 uniformed services of the United States and becomes totally

incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(a) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(b) The member provides to the director proof of honorable discharge from the uniformed services; and

(c) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first.

Sec. 7. RCW 41.32.810 and 1996 c 61 s 2 are each amended to read as follows:

(1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.32.755 through 41.32.825.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (6) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes both the employer and member contributions plus interest as determined by the department for

1 the period of the authorized leave of absence within five years of
2 resumption of service or prior to retirement whichever comes sooner.

3 (4) If a member fails to meet the time limitations of subsection
4 (3) of this section, the member may receive a maximum of two years of
5 service credit during a member's working career for those periods when
6 a member is on unpaid leave of absence authorized by an employer. This
7 may be done by paying the amount required under RCW 41.50.165(2) prior
8 to retirement.

9 (5) For the purpose of subsection (3) of this section, the
10 contribution shall not include the contribution for the unfunded
11 supplemental present value as required by RCW 41.32.775. The
12 contributions required shall be based on the average of the member's
13 earnable compensation at both the time the authorized leave of absence
14 was granted and the time the member resumed employment.

15 (6) A member who leaves the employ of an employer to enter the
16 (~~((armed forces))~~) uniformed services of the United States shall be
17 entitled to retirement system service credit for up to five years of
18 military service. This subsection shall be administered in a manner
19 consistent with the requirements of the federal uniformed services
20 employment and reemployment rights act.

21 (a) The member qualifies for service credit under this subsection
22 if:

23 (i) Within ninety days of the member's honorable discharge from the
24 uniformed services of the United States (~~((armed forces))~~), the member
25 applies for reemployment with the employer who employed the member
26 immediately prior to the member entering the (~~((United States armed~~
27 ~~forces))~~) uniformed services; and

28 (ii) The member makes the employee contributions required under RCW
29 41.32.775 within five years of resumption of service or prior to
30 retirement, whichever comes sooner; or

31 (iii) Prior to retirement and not within ninety days of the
32 member's honorable discharge or five years of resumption of service the
33 member pays the amount required under RCW 41.50.165(2).

34 (b) Upon receipt of member contributions under (a)(ii), (d)(iii),
35 or (e)(iii) of this subsection, the department shall establish the
36 member's service credit and shall bill the employer for its
37 contribution required under RCW 41.32.775 for the period of military
38 service, plus interest as determined by the department.

1 (c) The contributions required under (a)(ii), (d)(iii), or (e)(iii)
2 of this subsection shall be based on the compensation the member would
3 have earned if not on leave, or if that cannot be estimated with
4 reasonable certainty, the compensation reported for the member in the
5 year prior to when the member went on military leave.

6 (d) The surviving spouse or eligible child or children of a member
7 who left the employ of an employer to enter the uniformed services of
8 the United States and died while serving in the uniformed services may,
9 on behalf of the deceased member, apply for retirement system service
10 credit under this subsection up to the date of the member's death in
11 the uniformed services. The department shall establish the deceased
12 member's service credit if the surviving spouse or eligible child or
13 children:

14 (i) Provides to the director proof of the member's death while
15 serving in the uniformed services;

16 (ii) Provides to the director proof of the member's honorable
17 service in the uniformed services prior to the date of death; and

18 (iii) Pays the employee contributions required under chapter 41.45
19 RCW within five years of the date of death or prior to the distribution
20 of any benefit, whichever comes first.

21 (e) A member who leaves the employ of an employer to enter the
22 uniformed services of the United States and becomes totally
23 incapacitated for continued employment by an employer while serving in
24 the uniformed services is entitled to retirement system service credit
25 under this subsection up to the date of discharge from the uniformed
26 services if:

27 (i) The member obtains a determination from the director that he or
28 she is totally incapacitated for continued employment due to conditions
29 or events that occurred while serving in the uniformed services;

30 (ii) The member provides to the director proof of honorable
31 discharge from the uniformed services; and

32 (iii) The member pays the employee contributions required under
33 chapter 41.45 RCW within five years of the director's determination of
34 total disability or prior to the distribution of any benefit, whichever
35 comes first.

36 **Sec. 8.** RCW 41.32.865 and 1996 c 61 s 3 are each amended to read
37 as follows:

1 (1) A member who is on a paid leave of absence authorized by a
2 member's employer shall continue to receive service credit.

3 (2) A member who receives compensation from an employer while on an
4 authorized leave of absence to serve as an elected official of a labor
5 organization, and whose employer is reimbursed by the labor
6 organization for the compensation paid to the member during the period
7 of absence, may also be considered to be on a paid leave of absence.
8 This subsection shall only apply if the member's leave of absence is
9 authorized by a collective bargaining agreement that provides that the
10 member retains seniority rights with the employer during the period of
11 leave. The earnable compensation reported for a member who establishes
12 service credit under this subsection may not be greater than the salary
13 paid to the highest paid job class covered by the collective bargaining
14 agreement.

15 (3) Except as specified in subsection (4) of this section, a member
16 shall be eligible to receive a maximum of two years service credit
17 during a member's entire working career for those periods when a member
18 is on an unpaid leave of absence authorized by an employer. Such
19 credit may be obtained only if:

20 (a) The member makes the contribution on behalf of the employer,
21 plus interest, as determined by the department; and

22 (b) The member makes the employee contribution, plus interest, as
23 determined by the department, to the defined contribution portion.

24 The contributions required shall be based on the average of the
25 member's earnable compensation at both the time the authorized leave of
26 absence was granted and the time the member resumed employment.

27 (4) A member who leaves the employ of an employer to enter the
28 (~~((armed forces))~~) uniformed services of the United States shall be
29 entitled to retirement system service credit for up to five years of
30 military service if within ninety days of the member's honorable
31 discharge from the uniformed services of the United States (~~((armed~~
32 ~~forces))~~), the member applies for reemployment with the employer who
33 employed the member immediately prior to the member entering the
34 (~~((United States armed forces))~~) uniformed services. This subsection
35 shall be administered in a manner consistent with the requirements of
36 the federal uniformed services employment and reemployment rights act.

37 The department shall establish the member's service credit and
38 shall bill the employer for its contribution required under chapter

239, Laws of 1995 for the period of military service, plus interest as determined by the department. Service credit under this subsection may be obtained only if the member makes the employee contribution to the defined contribution portion as determined by the department.

The contributions required shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(a) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under this subsection within five years of the date of death or prior to the distribution of any benefit, whichever comes first.

(b) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under this subsection within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first.

1 **Sec. 9.** RCW 41.26.520 and 2002 c 28 s 1 are each amended to read
2 as follows:

3 (1) A member who is on a paid leave of absence authorized by a
4 member's employer shall continue to receive service credit as provided
5 for under the provisions of RCW 41.26.410 through 41.26.550.

6 (2) A member who receives compensation from an employer while on an
7 authorized leave of absence to serve as an elected official of a labor
8 organization, and whose employer is reimbursed by the labor
9 organization for the compensation paid to the member during the period
10 of absence, may also be considered to be on a paid leave of absence.
11 This subsection shall only apply if the member's leave of absence is
12 authorized by a collective bargaining agreement that provides that the
13 member retains seniority rights with the employer during the period of
14 leave. The basic salary reported for a member who establishes service
15 credit under this subsection may not be greater than the salary paid to
16 the highest paid job class covered by the collective bargaining
17 agreement.

18 (3) Except as specified in subsection (7) of this section, a member
19 shall be eligible to receive a maximum of two years service credit
20 during a member's entire working career for those periods when a member
21 is on an unpaid leave of absence authorized by an employer. Such
22 credit may be obtained only if the member makes the employer, member,
23 and state contributions plus interest as determined by the department
24 for the period of the authorized leave of absence within five years of
25 resumption of service or prior to retirement whichever comes sooner.

26 (4) A law enforcement member may be authorized by an employer to
27 work part time and to go on a part-time leave of absence. During a
28 part-time leave of absence a member is prohibited from any other
29 employment with their employer. A member is eligible to receive credit
30 for any portion of service credit not earned during a month of part-
31 time leave of absence if the member makes the employer, member, and
32 state contributions, plus interest, as determined by the department for
33 the period of the authorized leave within five years of resumption of
34 full-time service or prior to retirement whichever comes sooner. Any
35 service credit purchased for a part-time leave of absence is included
36 in the two-year maximum provided in subsection (3) of this section.

37 (5) If a member fails to meet the time limitations of subsection
38 (3) or (4) of this section, the member may receive a maximum of two

1 years of service credit during a member's working career for those
2 periods when a member is on unpaid leave of absence authorized by an
3 employer. This may be done by paying the amount required under RCW
4 41.50.165(2) prior to retirement.

5 (6) For the purpose of subsection (3) or (4) of this section the
6 contribution shall not include the contribution for the unfunded
7 supplemental present value as required by RCW 41.45.060, 41.45.061, and
8 41.45.067. The contributions required shall be based on the average of
9 the member's basic salary at both the time the authorized leave of
10 absence was granted and the time the member resumed employment.

11 (7) A member who leaves the employ of an employer to enter the
12 (~~(armed forces)~~) uniformed services of the United States shall be
13 entitled to retirement system service credit for up to five years of
14 military service. This subsection shall be administered in a manner
15 consistent with the requirements of the federal uniformed services
16 employment and reemployment rights act.

17 (a) The member qualifies for service credit under this subsection
18 if:

19 (i) Within ninety days of the member's honorable discharge from the
20 uniformed services of the United States (~~(armed forces)~~), the member
21 applies for reemployment with the employer who employed the member
22 immediately prior to the member entering the (~~(United States armed~~
23 ~~forces)~~) uniformed services; and

24 (ii) The member makes the employee contributions required under RCW
25 41.45.060, 41.45.061, and 41.45.067 within five years of resumption of
26 service or prior to retirement, whichever comes sooner; or

27 (iii) Prior to retirement and not within ninety days of the
28 member's honorable discharge or five years of resumption of service the
29 member pays the amount required under RCW 41.50.165(2).

30 (b) Upon receipt of member contributions under (a)(ii), (d)(iii),
31 or (e)(iii) of this subsection, the department shall establish the
32 member's service credit and shall bill the employer and the state for
33 their respective contributions required under RCW 41.26.450 for the
34 period of military service, plus interest as determined by the
35 department.

36 (c) The contributions required under (a)(ii), (d)(iii), or (e)(iii)
37 of this subsection shall be based on the compensation the member would

1 have earned if not on leave, or if that cannot be estimated with
2 reasonable certainty, the compensation reported for the member in the
3 year prior to when the member went on military leave.

4 (d) The surviving spouse or eligible child or children of a member
5 who left the employ of an employer to enter the uniformed services of
6 the United States and died while serving in the uniformed services may,
7 on behalf of the deceased member, apply for retirement system service
8 credit under this subsection up to the date of the member's death in
9 the uniformed services. The department shall establish the deceased
10 member's service credit if the surviving spouse or eligible child or
11 children:

12 (i) Provides to the director proof of the member's death while
13 serving in the uniformed services;

14 (ii) Provides to the director proof of the member's honorable
15 service in the uniformed services prior to the date of death; and

16 (iii) Pays the employee contributions required under chapter 41.45
17 RCW within five years of the date of death or prior to the distribution
18 of any benefit, whichever comes first.

19 (e) A member who leaves the employ of an employer to enter the
20 uniformed services of the United States and becomes totally
21 incapacitated for continued employment by an employer while serving in
22 the uniformed services is entitled to retirement system service credit
23 under this subsection up to the date of discharge from the uniformed
24 services if:

25 (i) The member obtains a determination from the director that he or
26 she is totally incapacitated for continued employment due to conditions
27 or events that occurred while serving in the uniformed services;

28 (ii) The member provides to the director proof of honorable
29 discharge from the uniformed services; and

30 (iii) The member pays the employee contributions required under
31 chapter 41.45 RCW within five years of the director's determination of
32 total disability or prior to the distribution of any benefit, whichever
33 comes first.

34 (8) A member receiving benefits under Title 51 RCW who is not
35 receiving benefits under this chapter shall be deemed to be on unpaid,
36 authorized leave of absence.

1 **Sec. 10.** RCW 43.43.260 and 2002 c 27 s 3 are each amended to read
2 as follows:

3 Upon retirement from service as provided in RCW 43.43.250, a member
4 shall be granted a retirement allowance which shall consist of:

5 (1) A prior service allowance which shall be equal to two percent
6 of the member's average final salary multiplied by the number of years
7 of prior service rendered by the member.

8 (2) A current service allowance which shall be equal to two percent
9 of the member's average final salary multiplied by the number of years
10 of service rendered while a member of the retirement system.

11 (3)(a) Any member commissioned prior to January 1, 2003, with
12 twenty-five years service in the Washington state patrol may have the
13 member's service in the ((armed-forces)) uniformed services credited as
14 a member whether or not the individual left the employ of the
15 Washington state patrol to enter such ((armed-forces)) uniformed
16 services: PROVIDED, That in no instance shall military service in
17 excess of five years be credited: AND PROVIDED FURTHER, That in each
18 instance, a member must restore all withdrawn accumulated
19 contributions, which restoration must be completed on the date of the
20 member's retirement, or as provided under RCW 43.43.130, whichever
21 occurs first: AND PROVIDED FURTHER, That this section shall not apply
22 to any individual, not a veteran within the meaning of RCW 41.06.150.

23 (b) A member who leaves the Washington state patrol to enter the
24 ((armed-forces)) uniformed services of the United States shall be
25 entitled to retirement system service credit for up to five years of
26 military service. This subsection shall be administered in a manner
27 consistent with the requirements of the federal uniformed services
28 employment and reemployment rights act.

29 (i) The member qualifies for service credit under this subsection
30 if:

31 (A) Within ninety days of the member's honorable discharge from the
32 uniformed services of the United States ((armed-forces)), the member
33 applies for reemployment with the employer who employed the member
34 immediately prior to the member entering the ((United States armed
35 forces)) uniformed services; and

36 (B) The member makes the employee contributions required under RCW
37 41.45.0631 and 41.45.067 within five years of resumption of service or
38 prior to retirement, whichever comes sooner; or

1 (C) Prior to retirement and not within ninety days of the member's
2 honorable discharge or five years of resumption of service the member
3 pays the amount required under RCW 41.50.165(2).

4 (ii) Upon receipt of member contributions under (b)(i)(B),
5 (b)(iv)(C), and (b)(v)(C) of this subsection, the department shall
6 establish the member's service credit and shall bill the employer for
7 its contribution required under RCW 41.45.060 for the period of
8 military service, plus interest as determined by the department.

9 (iii) The contributions required under (b)(i)(B), (b)(iv)(C), and
10 (b)(v)(C) of this subsection shall be based on the compensation the
11 member would have earned if not on leave, or if that cannot be
12 estimated with reasonable certainty, the compensation reported for the
13 member in the year prior to when the member went on military leave.

14 (iv) The surviving spouse or eligible child or children of a member
15 who left the employ of an employer to enter the uniformed services of
16 the United States and died while serving in the uniformed services may,
17 on behalf of the deceased member, apply for retirement system service
18 credit under this subsection up to the date of the member's death in
19 the uniformed services. The department shall establish the deceased
20 member's service credit if the surviving spouse or eligible child or
21 children:

22 (A) Provides to the director proof of the member's death while
23 serving in the uniformed services;

24 (B) Provides to the director proof of the member's honorable
25 service in the uniformed services prior to the date of death; and

26 (C) If the member was commissioned on or after January 1, 2003,
27 pays the employee contributions required under chapter 41.45 RCW within
28 five years of the date of death or prior to the distribution of any
29 benefit, whichever comes first.

30 (v) A member who leaves the employ of an employer to enter the
31 uniformed services of the United States and becomes totally
32 incapacitated for continued employment by an employer while serving in
33 the uniformed services is entitled to retirement system service credit
34 under this subsection up to the date of discharge from the uniformed
35 services if:

36 (A) The member obtains a determination from the director that he or
37 she is totally incapacitated for continued employment due to conditions
38 or events that occurred while serving in the uniformed services;

1 (B) The member provides to the director proof of honorable
2 discharge from the uniformed services; and

3 (C) If the member was commissioned on or after January 1, 2003, the
4 member pays the employee contributions required under chapter 41.45 RCW
5 within five years of the director's determination of total disability
6 or prior to the distribution of any benefit, whichever comes first.

7 (4) In no event shall the total retirement benefits from
8 subsections (1), (2), and (3) of this section, of any member exceed
9 seventy-five percent of the member's average final salary.

10 (5) Beginning July 1, 2001, and every year thereafter, the
11 department shall determine the following information for each retired
12 member or beneficiary whose retirement allowance has been in effect for
13 at least one year:

14 (a) The original dollar amount of the retirement allowance;

15 (b) The index for the calendar year prior to the effective date of
16 the retirement allowance, to be known as "index A";

17 (c) The index for the calendar year prior to the date of
18 determination, to be known as "index B"; and

19 (d) The ratio obtained when index B is divided by index A.

20 The value of the ratio obtained shall be the annual adjustment to
21 the original retirement allowance and shall be applied beginning with
22 the July payment. In no event, however, shall the annual adjustment:

23 (i) Produce a retirement allowance which is lower than the original
24 retirement allowance;

25 (ii) Exceed three percent in the initial annual adjustment; or

26 (iii) Differ from the previous year's annual adjustment by more
27 than three percent.

28 For the purposes of this section, "index" means, for any calendar
29 year, that year's average consumer price index for the Seattle-Tacoma-
30 Bremerton Washington area for urban wage earners and clerical workers,
31 all items, compiled by the bureau of labor statistics, United States
32 department of labor.

33 The provisions of this section shall apply to all members presently
34 retired and to all members who shall retire in the future.

35 **Sec. 11.** RCW 41.37.260 and 2004 c 242 s 32 are each amended to
36 read as follows:

1 (1) A member who is on a paid leave of absence authorized by a
2 member's employer shall continue to receive service credit as provided
3 for under RCW 41.37.190 through 41.37.290.

4 (2) A member who receives compensation from an employer while on an
5 authorized leave of absence to serve as an elected official of a labor
6 organization, and whose employer is reimbursed by the labor
7 organization for the compensation paid to the member during the period
8 of absence, may also be considered to be on a paid leave of absence.
9 This subsection shall only apply if the member's leave of absence is
10 authorized by a collective bargaining agreement that provides that the
11 member retains seniority rights with the employer during the period of
12 leave. The compensation earnable reported for a member who establishes
13 service credit under this subsection may not be greater than the salary
14 paid to the highest paid job class covered by the collective bargaining
15 agreement.

16 (3) Except as specified in subsection (4) of this section, a member
17 shall be eligible to receive a maximum of two years service credit
18 during a member's entire working career for those periods when a member
19 is on an unpaid leave of absence authorized by an employer. This
20 credit may be obtained only if:

21 (a) The member makes both the employer and member contributions
22 plus interest as determined by the department for the period of the
23 authorized leave of absence within five years of resumption of service
24 or prior to retirement whichever comes sooner; or

25 (b) If not within five years of resumption of service but prior to
26 retirement, pay the amount required under RCW 41.50.165(2).

27 The contributions required under (a) of this subsection shall be
28 based on the average of the member's compensation earnable at both the
29 time the authorized leave of absence was granted and the time the
30 member resumed employment.

31 (4) A member who leaves the employ of an employer to enter the
32 (~~(armed forces)~~) uniformed services of the United States shall be
33 entitled to retirement system service credit for up to five years of
34 military service. This subsection shall be administered in a manner
35 consistent with the requirements of the federal uniformed services
36 employment and reemployment rights act.

37 (a) The member qualifies for service credit under this subsection
38 if:

1 (i) Within ninety days of the member's honorable discharge from the
2 uniformed services of the United States ((armed forces)), the member
3 applies for reemployment with the employer who employed the member
4 immediately prior to the member entering the ((United States armed
5 forces)) uniformed services; and

6 (ii) The member makes the employee contributions required under RCW
7 41.37.220 within five years of resumption of service or prior to
8 retirement, whichever comes sooner; or

9 (iii) Prior to retirement and not within ninety days of the
10 member's honorable discharge or five years of resumption of service the
11 member pays the amount required under RCW 41.50.165(2).

12 (b) Upon receipt of member contributions under (a)(ii), (d)(iii),
13 or (e)(iii) of this subsection, the department shall establish the
14 member's service credit and shall bill the employer for its
15 contribution required under RCW 41.37.220 for the period of military
16 service, plus interest as determined by the department.

17 (c) The contributions required under (a)(ii), (d)(iii), or (e)(iii)
18 of this subsection shall be based on the compensation the member would
19 have earned if not on leave, or if that cannot be estimated with
20 reasonable certainty, the compensation reported for the member in the
21 year prior to when the member went on military leave.

22 (d) The surviving spouse or eligible child or children of a member
23 who left the employ of an employer to enter the uniformed services of
24 the United States and died while serving in the uniformed services may,
25 on behalf of the deceased member, apply for retirement system service
26 credit under this subsection up to the date of the member's death in
27 the uniformed services. The department shall establish the deceased
28 member's service credit if the surviving spouse or eligible child or
29 children:

30 (i) Provides to the director proof of the member's death while
31 serving in the uniformed services;

32 (ii) Provides to the director proof of the member's honorable
33 service in the uniformed services prior to the date of death; and

34 (iii) Pays the employee contributions required under chapter 41.45
35 RCW within five years of the date of death or prior to the distribution
36 of any benefit, whichever comes first.

37 (e) A member who leaves the employ of an employer to enter the
38 uniformed services of the United States and becomes totally

1 incapacitated for continued employment by an employer while serving in
2 the uniformed services is entitled to retirement system service credit
3 under this subsection up to the date of discharge from the uniformed
4 services if:

5 (i) The member obtains a determination from the director that he or
6 she is totally incapacitated for continued employment due to conditions
7 or events that occurred while serving in the uniformed services;

8 (ii) The member provides to the director proof of honorable
9 discharge from the uniformed services; and

10 (iii) The member pays the employee contributions required under
11 chapter 41.45 RCW within five years of the director's determination of
12 total disability or prior to the distribution of any benefit, whichever
13 comes first.

14 NEW SECTION. Sec. 12. Section 11 of this act takes effect July 1,
15 2006.

--- END ---

DRAFT FISCAL NOTE

REQUEST NO.

RESPONDING AGENCY:	CODE:	DATE:	BILL NUMBER:
Office of the State Actuary	035	11/16/04	Z-0177.1/Z-0227.1

SUMMARY OF BILL:

This bill impacts the Public Employees' Retirement System, the School Employees' Retirement System, the Teachers' Retirement System, the Law Enforcement Officers' and Firefighters' Retirement System Plan 2, the Washington State Patrol Retirement System, and the Public Safety Employees' Retirement System by authorizing interruptive military service credit for employees who cannot return to public employment due to death or total disability while serving in the uniformed services. Service credit could be purchased by a disabled member or survivor(s) of a deceased member for interruptive military service credit up to the date of death or disability.

Effective Date: 90 days after session.

CURRENT SITUATION:

Interruptive military service is governed by the Uniformed Services Employment and Re-employment Rights Act (USERRA). At a minimum, public employers must provide the protections specified in the act. State law can provide for benefits that are more generous than those under USERRA, as long as the minimum requirements of the federal law are fully satisfied.

USERRA provides for the re-employment of individuals who leave employment to serve in the uniformed services of the United States. Included in USERRA's re-employment rights is the right to restoration of retirement plan benefits, and to that end, USERRA provides for reinstatement of retirement service credit after re-employment. USERRA does not, however, address the retirement benefits that would have accrued to members who are never re-employed because they died while in active service or became totally incapacitated for continued service with their employer.

MEMBERS IMPACTED:

We estimate that each year, 0 to 6 members out of the total members of all the systems would be affected by this bill.

We estimate that for a typical member impacted by this bill, the increase in benefits would be in the \$40 to \$50 per month range.

FISCAL IMPACT:

The cost of this bill is insufficient to increase contribution rates in any of the affected systems.